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10/008,895	12/07/2001	Alfred Preukschat		5243

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 DR. MAX FOGIEL  
 44 MAPLE COURT  
 HIGHLAND PARK, NJ 08904

EXAMINER

NGUYEN, XUAN LAN T

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/008,895  
Filing Date: December 07, 2001  
Appellant(s): PREUKSCHAT ET AL.

**MAILED**

OCT 23 2006

**GROUP 3600**

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Dr. Max Fogiel  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/25/06 appealing from the Office action  
mailed 11/02/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,372,378	SEUFERT	12-1994
4,986,393	PREUKSCHAT ET AL.	1-1991

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Seufert.

Re: claims 1 and 10, Seufert shows a regulated dashpot with shock-absorption force controls in figure 1, for motor vehicles, as in the present invention, comprising: at least one flow-regulating system including at least one shock-absorption component for a compression phase and for a decompression phase, at least one valve assembly with two electrically variable flow resistance regulated by regulating valves 68a, 68b, 66a, 66b at least one fixed bypass valve 60 with a non-varying constricted flow cross-section hydraulically and directly paralleling the flow-regulating system, figure 1 shows throttle valve 60 in parallel with both valves 68a, 68b, 66a, 66b as clearly shown in figure 1, whereby the bypass valve has a constant opened flow-through cross section hydraulically in parallel with the regulating valves, said at least one flow regulating

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system for the compression phase and said at least one flow regulating system for the decompression phase being in the form of said regulating valves with variable flow constriction, said flow resistance being continuous for providing continuous damping between soft and hard damping, said bypass valve preventing pressure pulses in damping fluid when said regulating valves transfers rapidly from open to close positions corresponding to upward wheel shocks and sudden wheel accelerations, so that sudden jolts are prevented when shifting between soft and hard damping for comfort in riding in said vehicles, and said bypass valve is integratable into the flow regulating system and having minimal passage for hydraulic fluid and preventing the dashpot from being entirely blocked when the regulating valves are closed, as shown in figure 1, said flow-regulating system for the compression and decompression phases forming main flow channels through said shock-absorption component, said valve assembly with electrically variable flow resistance forming a main valve assembly for said shock-absorption component, said fixed bypass valve 60 having a constant non-adjustable flow cross section, as shown in figure 1.

2. Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seufert.

Re: claim 6, Seufert's regulated dashpot, as rejected in claim 1, lacks the throttle valve 60 being accommodated in a separate unit outside the dashpot and communicates with said dashpot through a hydraulic line. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Seufert's dashpot to arrange for throttle valve 60 to be accommodated in a separate unit

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outside the dashpot and communicates with the dashpot through a hydraulic line so that it would provide easy access to the throttle valve in case of repair. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Re: claim 11, Seufert shows a regulated dashpot with shock-absorption force controls in figure 1, for motor vehicles, as in the present invention, comprising: at least one flow-regulating system including at least one shock-absorption component for a compression phase and for a decompression phase, at least one valve assembly with two electrically variable flow resistance regulated by regulating valves 68a, 68b, 66a, 66b at least one fixed bypass valve 60 with a non-varying constricted flow cross-section hydraulically and directly paralleling the flow-regulating system, figure 1 shows throttle valve 60 in parallel with both valves 68a, 68b, 66a, 66b as clearly shown in figure 1, whereby the bypass valve has a constant opened flow-through cross section hydraulically in parallel with the regulating valves, said at least one flow regulating system for the compression phase and said at least one flow regulating system for the decompression phase being in the form of said regulating valves with variable flow constriction, said flow resistance being continuous for providing continuous damping between soft and hard damping, said bypass valve preventing pressure pulses in damping fluid when said regulating valves transfers rapidly from open to close positions corresponding to upward wheel shocks and sudden wheel accelerations, so that sudden jolts are prevented when shifting between soft and hard damping for comfort in riding in said vehicles, and said bypass valve is integratable into the flow regulating system and

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having minimal passage for hydraulic fluid and preventing the dashpot from being entirely blocked when the regulating valves are closed, as shown in figure 1. Seufert's regulated dashpot, as discussed above, lacks the throttle valve 60 being accommodated in a separate unit outside the dashpot and communicates with said dashpot through a hydraulic line. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Seufert's dashpot to arrange for throttle valve 60 to be accommodated in a separate unit outside the dashpot and communicate with the dashpot through a hydraulic line so that it would provide easy access to the throttle valve in case of repair. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

3. Claims 1, 6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Preukschat et al. (USP 4,986,393) in view of Seufert.

Re: claims 1, 6 and 10, Preukschat et al. show a regulated dashpot with shock-absorption force controls in figure 1c, for motor vehicles; as in the present invention, comprising: at least one flow-regulating system including at least one shock-absorption component for a compression phase and for a decompression phase, at least one valve assembly with two electrically variable flow resistance regulated by regulating valves 8.1, 8.2, 7.1, 7.1.1, 7.1.2, 7.2, 7.2.1, 7.2.2 at least one bypass valve 7.3, figure 1 shows valve 7.3 in parallel with both valves 8.1, 8.2, 7.1, 7.1.1, 7.1.2, 7.2, 7.2.1, 7.2.2 as clearly shown in figure 1c, said at least one flow regulating system for the compression phase and said at least one flow regulating system for the decompression phase being

in the form of said regulating valves with variable flow constriction, said flow resistance being continuous for providing continuous damping between soft and hard damping, said bypass valve preventing pressure pulses in damping fluid when said regulating valves transfers rapidly from open to close positions corresponding to upward wheel shocks and sudden wheel accelerations, so that sudden jolts are prevented when shifting between soft and hard damping for comfort in riding in said vehicles, and said bypass valve is in a separate unit outside of said dashpot and communicate with said dashpot through hydraulic lines, as shown in figure 1c, and having minimal passage for hydraulic fluid and preventing the dashpot from being entirely blocked when the regulating valves are closed, as shown in figure 1c, said flow-regulating system for the compression and decompression phases forming main flow channels through said shock-absorption component, said valve assembly with electrically variable flow resistance forming a main valve assembly for said shock-absorption component, as shown in figure 1c. Preukschat et al. show bypass valve 7.3 as a two way spring biased valve. Seufert teaches a throttle valve 60 with a non-varying constricted, constant opened and constant non-adjustable flow-through cross section in figure 1. Seufert further teaches in column 5, lines 58 and 59, that an art equivalent throttle valve to a non-varying constricted, constant opened and constant non-adjustable flow-through cross section valve is a spring biased valve. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Preukschat et al.'s dashpot with a non-varying constricted, constant opened and constant non-adjustable flow-through cross section valve in place of a spring biased valve as taught



by Seufert since it is old and well known in the art of dashpot dampening to utilize either a non-varying constricted, constant opened and constant non-adjustable flow-through cross section valve or a spring biased valve; since these two types of valves are considered to be art equivalent and to replace one for the other only requires routine skill in the art as taught by Seufert.

Re: claim 11, the discussion for the rejection of claims 1, 6 and 10 meet all the claimed limitations of claim 11.

#### **(10) Response to Argument**

*Appellant's arguments on pages 4 and 5 of the Brief dated 9/25/06 mainly state that Seufert alone and Preukschat in combination with Seufert provide the claimed elements in claims 1, 6, 10 and 11 except for the teaching of a continuous damping in that Seufert provides only three discrete stages of "soft, medium and hard".*

The Examiner would like to emphasize the claim language of claims 1 and 11 wherein both claims state "said flow resistance being continuous for providing **continuous damping between soft and hard damping**". As stated by Appellant in the argument, **Seufert's system provides** damping between soft, medium and hard. It is believed that **medium is a continuation between soft and hard**. Hence, it is determined that Seufert's system, as stated in the rejections, meets the claimed limitation "continuous damping between soft and hard damping". **This is a very important point in that Appellant repeatedly argues about the continuity in Appellant's damping system based on common understanding of a person of**

**ordinary skill in the art without responding to the fact of what the claim language is stating.** Claims 1 and 11 simply state “said flow resistance being continuous for providing **continuous damping between soft and hard damping**”. It would not matter how many steps or how many stages between soft and hard damping as long as there is a continuation between the soft stage and hard stage. Seufert clearly states and Appellant agrees that there exists a medium stage in Seufert’s system. Again, a medium state qualifies as a continuation between soft and hard.

*Appellant further argues in details about: (1) Seufert’s figures 3a to 3d from page 6 to page 8 of the Brief; (2) the throttling element 7 of the instant invention from page 8 to the end of the first paragraph of page 9 and the last paragraph of page 13 to the end of the third paragraph of page 14; and (3) supports from the instant specification to distinguish Appellant’s “continuous damping” from Seufert’s “continuous damping”.*

(1) First, figures 3a to 3d of Seufert were not cited in any rejections. The Examiner would like to concentrate on the claimed features as presented. As stated above, Seufert meets the claimed elements and features alone and in combination with Preukschats.

(2) Second, Appellant states on page 4 “Whereas there are elements claimed in Appellant’s arrangement which are also to be found in the reference patent to Seufert, Seufert does not provide continuous damping”. From this passage, one could understand that Seufert meets the claimed elements except for the continuous damping. Appellant then argues that element 60 of Seufert is not the same as element 7 of Appellant’s. Appellant is being contradictory in his arguments. As shown in the

figures, it is clear that **element 60 of Seufert and element 7 of Appellant are illustrated exactly the same way**. It is maintained that element 60 of Seufert is the same as Appellant's element 7. Appellant further argues that Seufert discloses in column 5, lines 53-59, that "A throttling path may be formed for example by one valve impinged by a spring."; therefore, element 60 of Seufert can be formed as a valve impinged by a spring. This passage of Seufert is considered as a teaching of an alternative embodiment of another well known way to restrict flow. Appellant further argues that element 7 of the instant invention is different in that element 7 is formed of a constant non-variable flow cross-section by citing the specification on page 3, lines 13-16, "bypass valve 7 provides a minimal passage for the hydraulic fluid and accordingly prevents the dashpot from being entirely blocked while regulating valves 5 and 6 are closed." (page 14 of the Brief). This passage does not prove that element 7 is formed of a constant non-variable flow cross-section. A typical spring loaded check valve would perform this function as explained by Appellant in the first paragraph of page 9 of the Brief. Based on the specification, illustration and arguments from Appellant, there are two facts: element 7 of the instant invention and element 60 of Seufert are illustrated exactly the same; and the explanations of a throttling function from Seufert and Appellant are the same. It is concluded that element 7 of the instant invention and element 60 of Seufert are exactly the same.

(3) Appellant cited page 1, lines 26 to page 2, line 1 of the specification "notes that a continuous transition between hard and soft phases can be obtained by simple means" (page 12 of the Brief); and page 2, lines 7-9 of the specification "Since there will

be no sudden jolts when shifting between the hard and soft phases and vice versa, riding comfort will be considerably improved." (page 13 of the Brief) to provide support for the meaning of a continuous damping. The cited passages do not provide any further details to distinguish Appellant's continuous damping and Seufert's continuous damping. In fact, Seufert meets the claimed elements, the same as "simple means" above, and the same continuity of a medium stage between soft and hard as argued by Appellant and as explained by the cited passages.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Lan Nguyen

Primary Examiner

AU 3683

 10/10/06

Conferees:

James McClellan

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